

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM T. ALLEN,

Plaintiff,

v.

**JAMES VESHECCO, MARK A.
DIVECCHIO, VINCE KINNANE,
JAMES SENYO, ANDREW SMITH,
JACK ROEHM, ALLEN NEMI,
CORPORAL SABBLING, SELENA
PENETTA, MILLCREEK
COMMUNITY HOSPITAL,
JOHN DOE, JANE DOE, DR. MILIE,
TIMOTHY CHARITY, and KENN
LOWMAX,**

Defendants.

**Civ. No. 09-306 Erie
Magistrate Judge Baxter**

ORDER

This matter has been referred to United States Magistrate Judge Susan Paradise Baxter in accordance with the Magistrates Act, 28 U.S.C. §§ 636 (b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Plaintiff originally filed his Complaint on October 26, 2009, in the Court of Common Pleas of Erie County at Docket No. 14832-2009. On December 8, 2009, this matter was removed to the United States District Court for the Western District of Pennsylvania. On December 28, 2009, Plaintiff filed an Objection to Removal, followed by a Memorandum in Support of his objection on December 30, 2009. On January 19, 2010, the Magistrate Judge issued a Report and Recommendation, recommending that Plaintiff's Objection to Removal be denied (Doc. 22).

On February 18, 2010, Plaintiff filed an Appeal to this Court (Doc. 28) arguing that he should not be required to respond to Defendants' dispositive motions until his challenge to jurisdiction, (*i.e.*, his Objection to Removal) had been decided. Because it was apparent from Plaintiff's Appeal that he had not received the Report and Recommendation denying his objection to removal, we served a copy of the Report and Recommendation on February 23, 2010, and allowed the parties fourteen days after service to file objections to the Report and Recommendation. No timely objections were filed.

On May 27, 2010, Plaintiff filed a Motion for Removal to state court of his negligence claim against certain Defendants. (Doc. 37.) On June 4, 2010, the Magistrate Judge denied Plaintiff's motion for removal by Text Order. On June 24, 2010, Plaintiff filed a Reply to Defendant's Response to Plaintiff's Motion for Removal. (Doc. 49). On June 25, 2010, Plaintiff filed the instant Appeal of the Magistrate Judge's Text Order denying his motion for removal. (Doc. 50).

We see no error in the Magistrate Judge's Order denying Plaintiff's motion for removal, and thus we will deny his Appeal. In addition, we see no error in the January 19, 2010 Report and Recommendation recommending that Plaintiff's Objection to Removal be denied.

AND NOW, to-wit, this 7th day of July, 2010, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiff's Appeal of Magistrate Judge Susan Paradise Baxter's Order Denying Removal of Action Against Millcreek Defendant's to the Erie County Court of Common Pleas, Dated June 4, 2010 (Doc. 50) be and hereby is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Objections to Removal (Doc. 6) are DENIED. The report and recommendation, dated January 19, 2010, is adopted as the opinion of the court.


s/ Maurice B. Cohill, Jr.

Maurice B. Cohill, Jr.
Senior United States District Judge

cc: William T. Allen
HR-4213
SCI FRACKVILLE
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FRACKVILLE, PA 17931

Counsel of record